IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R E E R

LUNA RAM. V. INAYAT KHAN.

S. B. CIVIL REVISION PETITION NO.621/2005, against the order dated 9.9.2005, passed by Mr.Mahesh Kumar Sharma, Additional Civil Judge (Senior Division) No.1, Bikaner, in Civil Case No.14/2004.

DATE OF ORDER: : JANUARY 16, 2007.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.M.S.Purohit for Mr.Ramesh Guleria, for Petitioner.
Mr.D.D.Chitilangiya, for Respondent.

BY THE COURT:

Heard learned counsel for the parties.

It is submitted by the learned counsel for the petitioner that the plaintiff earlied filed a suit for the same relief which was registered as Civil Original Suit No.106/2003. In that suit, the plaintiff submitted an application under O.23, Rule 1, CPC, seeking permission to withdraw the suit, with liberty to file fresh suit which was dismissed by the trial Court. However, on

petitioner-defendant's application under O.7, Rule 11, CPC, the trial Court held that since the plaintiff has not served notice under Section 106 of the Transfer of Property Act before filing the suit, therefore, the plaintiff's suit is liable to be rejected. Consequently, the plaintiff's suit was rejected by the order of the trial Court dated 6th January, 2005. The plaintiff, thereafter filed present suit, wherein the defendant submitted application under Section 11, CPC, praying that the present suit of the plaintiff be dismissed as it is barred by principle of res-judicata. The said application of the defendant-petitioner was dismissed by the trial Court vide order dated 9th September, 2005. Hence, this revision petition.

According to the learned counsel for the petitioner, since the trial Court rejected the application of the plaintiff-non-petitioner filed under O.23, R.3, CPC, for withdrawal of the suit with liberty to file fresh suit, and earlier suit was dismissed by the trial Court, therefore, the plaintiff's present suit is barred by the principle of res-judicata.

I considered the submissions of the learned counsel for the petitioner. The earlier suit was, admittedly, dismissed for want of statutory notice under Section 106, T.P.Act and none of the issue was decided by the trial Court as the trial Court thought it fit to reject the plaint on application filed by the defendant-petitioner

under O.7, R.11, CPC.

In view of the above, the trial Court's order dated 9th September, 2005, dismissing the petitioner's application under Section 11, CPC, is absolutely in accordance with law. In view of the above, the revision petition is dismissed.

(PRAKASH TATIA), J.

scd